

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 112 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

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STATE OF GUJARAT

Versus

CHANDKHA KASAMKHA

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Appearance:

Mr.S.R.Divetia, PUBLIC PROSECUTOR for Petitioner

No one appears for the respondent despite service.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/08/96

ORAL JUDGEMENT

This Criminal Appeal under section 378 (4) of the Code of Criminal Procedure is directed against the order dated 9.12.1982 passed by the Metropolitan Magistrate, Court No.5, Ahmedabad in Criminal Case No. 3617 of 1979 whereby the Respondent-Accused was acquitted of the offence under sections 66B and 65A of the Bombay

Prohibition Act.

The prosecution came with the case that one Shri A.J.Bhatt, Police Inspector was on checking duty at the broad guage waiting room of the Railway Station, Ahmedabad. He got information that Rakshak of Railway Protection Force was to come with opium. He was keeping watch on the basis of this information and when Valsad Passenger came from Vadodara to Ahmedabad he noticed that the Respondent-Accused came with a packet in his one hand and iron box in the other hand. He was wearing khakhi pant and dress of RPF. Police Inspector A.J.Bhatt intercepted him and found 11 Kg.opium from the packet in the possession of the Respondent-Accused. Panchas were called and the Panchnama was prepared. The Respondent-Accused was chargesheeted who denied the charge. The panchas were examined who turned out to be hostile. Permission to examine the other witnesses was not granted and therefore a revision was preferred in which the matter was remanded. Since it was a case of summary proceedings the Respondent-Accused denied the charge and panch namely Mahendra was examined again.

It was also the case of the prosecution that samples were taken and the same were sent to the Chemical Analyst. The Trial Court has found that except the statement of Police Inspector A.J.Bhatt there is no other evidence in support of the case of the prosecution. Witnesses of the panchnama had turned out to be hostile and witness Mahendra who was first examined on 25.5.1980 and again on 20.5.1982 has not supported the case of the prosecution. This prosecution witness Mahendra has given contradictory version in his earlier statement dated 25.2.1980 and the subsequent statement dated 20.5.1982. Apart from the fact that he had not supported the case of the prosecution in his statement dated 25.2.1980, he has stated in his examination in chief on 20.5.1982 that he does not remember as to what was contained in the packet which is being shown to him as muddamal. He has admitted that his statements were earlier recorded on 25.2.1980 and he has stated that on 25.5.1979 he was called in the Railway Police Chowky and he has also stated that whatever he had stated on 25.2.1980 was correct. He has also stated in cross-examination that muddamal was not recovered from the Respondent-Accused in the Musafirkhana and he had deposed against the Respondent-Accused at the instance of Police Inspector A.J.Bhatt.

True it is that the samples which were taken have been reported by Chemical Analyst to be opium but the fact remains that it has been suggested in

cross-examination to the prosecution witness i.e. Police Inspector A.J.Bhatt that the muddamal was found from the Musafirkhana as unclaimed article and he had planted this case on the Respondent-Accused because his relations were strained with the Respondent-Accused while he was posted at Ahmedabad Railway Station earlier. It was also suggested that he had taken signatures of the panchas lateron and he had planted this case so that the Respondent-Accused may lose his job. He has denied all these suggestions but the fact remains that except the oral statement of Police Inspector A.J.Bhatt there is no other evidence whatsoever to connect the Respondent-Accused with the offences under sections 66B & 65A of the Bombay Prohibition Act. The Trial Court has already acquitted the Respondent-Accused with regard to an incident of 1979 way back on 9.12.1982. I do not find it safe to alter the acquittal into conviction on the basis of sole evidence of Police Inspector A.J.Bhatt which is not corroborated by any other evidence on record and feel inclined to uphold the acquittal by giving benefit of doubt to the Respondent-Accused in view of the defence of the Respondent-Accused that his relations with Police Inspector A.J.Bhatt were strained while he was earlier posted at Ahmedabad Railway Station. There is no basis to interfere with the order of acquittal and accordingly this Appeal fails and is hereby dismissed.

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